

Department of the Navy, DoD

§ 757.18

an individual before he is transferred to a Department of Veterans' Affairs hospital. This policy does not apply in cases where the MTF referred the patient to the Veterans' Affairs hospital and then paid for the care.

[57 FR 5072, Feb. 12, 1992, as amended at 72 FR 53428, Sept. 19, 2007]

§ 757.16 Claims asserted only with OJAG approval.

(a) *Certain Government contractors.* JAG approval is required before asserting a claim against a Federal government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal government for tort liability.

(b) *U.S. personnel.* JAG approval is required before asserting MCRA claims directly against servicemembers, their dependents and federal employees and their dependents for injury to another person. No approval is necessary to assert claims against their insurance policies, however, except for injuries caused by servicemembers and federal employees acting "within the scope of their employment." Intra-familial tort immunity would not preclude the Government from asserting any claims for care furnished to a tortfeasor's family members.

[72 FR 53429, Sept. 19, 2007]

§ 757.17 Statute of limitations.

(a) *Federal.* Claims asserted under the MCRA or against an automobile liability insurer through 10 U.S.C. 1095 are founded in tort and must be brought within 3 years after the action "first accrues" (28 U.S.C. 2415b). Normally, a medical care claim "first accrues" on the initial date of treatment.

(b) *Claims asserted under 10 U.S.C. 1095.* Although legal arguments can be made that claims asserted under 10 U.S.C. 1095 against a no-fault or personal injury protection insurer are founded in contract and can be brought within 6 years (28 U.S.C. 2415a), all claims should be asserted within 3 years of the date when the claim accrued. However, some states require notice of such claims to be filed within a shorter period of time.

[72 FR 53429, Sept. 19, 2007]

§ 757.18 Asserting the claim.

(a) *Initial action by the JAG designee.* When advised of a potential claim, the JAG designee will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When DoN has reimbursed a non-Federal provider for health care, or when TRICARE has made payment for a Navy health care beneficiary, the JAG designee will assert any resulting claim.

(2) When care is provided in a Federal treatment facility, the status of the injured person will determine the agency that will assert a resulting claim. Cost of treatment provided or paid for by an MTF is deposited in that MTF's account, regardless of which service is making the collection.

(i) Where DoN members, retirees, or their dependents receive medical treatment from another Federal agency or department, the DoN will assert any claim on behalf of the United States based on information provided by the treating agency or department.

(ii) Similarly, where a DoN MTF provides care to personnel of another Federal agency or department, that other agency or department will assert any claim on behalf of the United States.

(3) If the claim is one which the DoN should assert, the JAG designee will forward all available information to the appropriate department or agency.

(4) If the claim is one which the DoN should assert, the JAG designee will ensure an appropriate investigation into the circumstances underlying the claim is initiated and will provide notice to the injured party and all third parties who may be liable to the injured person and the United States under the MCRA or 10 U.S.C. 1095.

(b) *Investigating the claim.* While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions.

(c) *Notice of claim.* (1) The JAG designee will assert claims by mailing a notice of claim to identified third-party tortfeasors and their insurers or insurers for third-party beneficiary coverage. Many insured tortfeasors fail